IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

CRP.No. 515 of 2006

EP.104 /2003 IN OS.34/2002 of PRINCIPAL SUB COURT,KOCHI

.....

REVN. PETITIONER/PLAINTIFF/DECREE HOLDER:

RAVI,
AGED 60, S/O.CHONNAN,
VEMBILLY HOUSE, WARD NO.3,
NAYARAMBALAM.P.O.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.N.SURESH

RESPONDENT/DEFENDANT/JUDGEMENT DEBTOR:

SUBBAYYAN,
S/O.VELU, PRINCIPAL,
SREE NARAYANA ITC, NARAKKAL.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

C.R.P.No. 515 of 2006

ORDER

Service is complete. Respondent entered appearance. Heard counsel for the petitioner.

2. The petitioner is the decree holder in O.S. No.34/02 on the file of the Principal Sub Court, Kochi. He moved for personal execution as also for execution as against the properties belonging to the respondent/judgment debtor, filing E.P.No.104/03 in O.S.No.34/02. The execution court disallowed execution as against the properties and held that execution petition is maintainable only in relation to personal execution.

3. The petitioner, as plaintiff, while instituting O.S.No.34/02, moved for attachment, before judgment, of the property now sought to be proceeded against by filing I.A.No.580/02. Thereupon, the respondent gave an undertaking that he would not alienate the property. The said undertaking was recorded and I.A.No.580/02 was

closed vide Annexure I order dated 6.8.2002. It is submitted by the counsel for the petitioner that in violation of the undertaking given by the respondent and accepted by the court, vide Annexure I order, the respondent alienated the property on 31.10.2002 and that therefore, vide Annexure II, application was moved by the petitioner for attachment of the said property and attachment was allowed on 26.7.2003 and the attachment was also effected vide Annexure III report. Obviously, the attachment so effected was subsequent to the sale of the property. The execution court, vide order impugned, held that the undertaking given to the court and recorded by the court will not be entered in the Sub Registry as an item of encumbrance and that such an undertaking cannot be equated to an attachment and that therefore, the property that has been sold by the respondent/ judgment debtor is not liable to be proceeded against.

4. Counsel for the petitioner has relied on the decision of a Division Bench of this Court in

Cherukutty v. Subrama Sastrigal (1987 (2) KLT 767), wherein a similar instance came up for consideration. This Court considered the question and held that an undertaking given to and accepted by the court and the transfer effected in violation thereof will not be binding on the decree holder. This decision applies on all force to the facts of this case. The result is that refusal of the court below, vide order impugned to proceed against the property of the respondent/judgment debtor, which was sold violating the undertaking given to the court is unjustified and improper and the alienation is not binding on the petitioner/decree holder and that the property is liable to be proceeded against for realisation of the decree debt.

The impugned order is, hence, set aside, allowing this civil revision petition.

19th March, 2007 (K.P.Balachandran, Judge)

tkv